

HOMESTAKE OIL AND GAS CO.

IBLA 79-66      Decided April 16, 1979

Appeal from decision of Montana State Office, Bureau of Land Management, holding renewal lease expired. Great Falls 080306(a).

Vacated and remanded.

1.      Oil and Gas Leases: Renewals—Oil and Gas Leases: Twenty-Year Leases

To obtain a renewal of a 20-year oil and gas lease the lessee should file an application for renewal at least 90 days prior to the expiration of the lease term. However, this requirement is permissive and a delay in filing the application may be excused in the presence of special circumstances.

APPEARANCES: Paul Coolidge, President, Homestake Oil and Gas Co.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Homestake Oil and Gas Co. appeals from the October 25, 1978, decision of the Montana State Office, Bureau of Land Management (BLM), holding oil and gas lease Great Falls 080306(a) expired by its own terms at midnight, July 31, 1977. The lease was issued August 25, 1937, for a 20-year term with a preferential right in the lessee to renew the lease for successive 10-year terms. Renewal leases were issued August 1, 1957, and 1967. To obtain a renewal, a lessee should file an application to renew at least 90 days prior to the expiration of the lease term. 43 CFR 3107.8-2. The appellant did not file a renewal application or a relinquishment and, accordingly, the lease expired.

In its statement of reasons for appeal, appellant requests that we grant the 10-year renewal retroactive to August 1, 1977. Appellant states the failure to apply for renewal was due to administrative oversight. It further points out that it has paid the minimum royalty and maintained the bond on the lease through July 31, 1979.

Appellant points to its faithful performance of its obligations under the lease for 40 years, and its investment in the property as reasons why the lease should be renewed. Finally, appellant states that if the lease is terminated and the existing wells on the leasehold plugged, it would probably not be profitable for another operator to reopen and produce the wells. It has initiated steps to resume production.

[1] Decisions of this Department have held that the regulation 43 CFR 3107.8-2, is permissive and that delay in filing a renewal application may be excused in the presence of special circumstances. Peacock Oil Company, Inc., 30 IBLA 103 (1977); Oscar L. Butcher, 61 I.D. 120 (1953); Melvin N. Armstrong, A-26474 (August 22, 1952). The BLM decision was proper at the time it was rendered as appellant had not applied for renewal. However, now appellant seeks the favorable exercise of discretion in waiving the requirement that the application be timely filed. Therefore, we will remand the case to BLM to permit appellant to submit the appropriate filing fee and documents, and in the absence of any countervailing policy considerations or other considerations which would militate against granting the application, BLM may allow renewal. See 43 CFR 1821.2-2(g).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded for further action consistent herewith.

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Joan B. Thompson  
Administrative Judge

I concur.

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Douglas E. Henriques  
Administrative Judge

## ADMINISTRATIVE JUDGE BURSKI CONCURRING:

The issue involved in the instant appeal is whether authority exists to permit the renewal of a 20-year oil and gas lease where the application for renewal is not filed until after the expiration of either the original or renewal term. Were this question presented as a matter of first impression, I would not hesitate to answer in the negative. Upon the running of its term, an oil and gas lease expires by operation of law. A subsequent attempt to resuscitate such an expired lease would fail as there would no longer be anything in esse which might be renewed or extended. Cf. Jones-O'Brien, Inc., 85 I.D. 89 (1978).

This issue, however, has been presented on a number of occasions in the past. The cases cited by the majority, while notably benefit of an animating rationale, clearly support the grant of the renewal in the present appeal. For a period in excess of 25 years the Department has consistently held, in the face of the admonition of the regulation, that a renewal may be granted to the holder of such leases even in the absence of the timely filing of an application for renewal during the life of the lease.

While the Board does not mechanistically adhere to the principle of stare decisis, it must be recognized that after the passage of so much time, present misgivings must yield to the course charted by past precedents. See State of Wyoming, 27 IBLA 137, 83 I.D. 364 (1976), aff'd, Wyoming v. Andrus, 436 F. Supp. 933 (D. Wyo. 1977).

In view of the consistent Departmental practice and interpretation, as evidenced by the cases cited in the majority decision, I must reluctantly concur in the majority's disposition of this appeal.

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James L. Burski  
Administrative Judge

